THE

LA. LOTTERY COMPANY,

SHOWING THAT ITS CHARTER HAS BEEN REPEALED AND THAT IT WAS NOT REVIVED BY THE CONSTITUTION.

AN ARGUMENT BY B. J. SAGE.

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NEW ORLEANS, Nov. 12th, 1883.

B. J. SAGE, ESQ.:

Dear Sir—Will you be kind enough to address a public meeting which will be held in Baton Rouge, on Saturday the 24th inst.

Your information on all subjects of governmental policy would make any suggestions of yours, looking to its reform in this State, particularly valuable.

I sincerely hope you may be able to spare the time for that purpose on the date indicated.

Respectfully, etc., I. W. PATTON,

Chairman Ogden Campaign Committee.

NEW ORLEANS, Nov. 18th, 1883.

To COL. I. W. PATTON, Chairman, &c.:

My Dear Sir—On three or four vital subjects of polity, as to which I have strong convictions and deep feelings, I would be glad, as a simple citizen, to address my fellow citizens anywhere and everywhere in the State. And I heartily approve all efforts at governmental reform. Owing to antecedent circumstances, I must decline to speak by appointment at a political gathering, but I beg leave to give my views on what I consider the most important subject of them all, deeming it a sin of omission not to do so on every proper occasion; I mean the subject of

THE LOUISIANA LOTTERY COMPANY.

I have opposed this abomination from the first, mainly on the grounds now set forth, always hoping that the time would come when those who put it upon us, as well as those who have aided and abetted in the chronic crime, would be thought by the people to deserve punishment instead of suffrages. And I considered the adoption of Article 167 of the Constitution, with its imp *in esse* and its imps *in posse*, as a Democratic adoption of the bastards of radicalism, as well as a clear case of "the dog returning to his vomit, and the sow to her wallowing in the mire!"

My constitutional views on the great subject, however, I submit to the Bar, and our leaders of thought, with much deference, in the face of an almost unanimous belief that the monster is ensconced in the organic law.

I trust that all readers will carefully note how far I am sustained in these views by the Federal Supreme Court.

In 1879, Louisiana called a convention "to *frame* a new Constitution" of government—so the statute reads. The work done consists of 268 articles—all of them, *with one exception*, providing for *institutions and principles of political government;* all of them *but that one*, being purposed to preserve and defend the inalienable rights of the individual people, viz: life, liberty and the means of happiness, and consequently to protect public safety, order, health and morality.

The one exception in the "frame" or "plan," is an institution for gambling—a thing abnormal, unnatural and cancerous, with roots carrying virus, corruption and moral death throughout society. The foul and foreign thing does not consist with, but *militates against, the purpose of government;* and, as we shall see, is not based on "the consent of the governed."

Now I believe, and aim to show, that this corporate gambler has no legal or constitutional existence, and no right to pursue its vocation; but, that if it be claimed or decided to have a corporate being, it is subject to the police power of the legislature, which can, at all times, control its conduct and business, and license it from year to year, or prohibit its immoral calling; and that this can be done by simple majority legislation, no amendment of the Constitution (which requires a two-thirds vote for initiation) being needed.

Basing myself on the philosophy of government and jurisprudence, as well as on facts and positive law, I will now try to maintain the following positions, viz: that the legislative authority cannot possibly legalize, or contract for, lottery gambling, even if it can charter a company for such avowed purpose; that the said legislative agency can only create corporations for the public good, or in the strict line of governmental purposes, unless specially authorized to go beyond, and that, therefore, no gambling corporation could be created; that such a contract is not protected by the federal article [I, §10] which prohibits state laws impairing the obligation of contracts; that the legisla-

ture could, as it did do in 1879, destroy the company and stop its business; and that, finally, even if the company do now constitutionally exist, it is, just as all other judicial beings are, subject, in its person, conduct and business, to the police power of the legislature, expressed by a mere majority vote.

These views, as we shall see, are sustained by many courts, including the highest one in the Union, which never fails to give full sanction to them.

As the Bar and the Bench are the special guardians of freedom, justice and morality, I beg their careful and candid attention to the points and arguments I now proceed to make.

I. SUCH CONTRACT WAS ALWAYS A NULLITY, because the legislature had no authority to make a contract for such purpose—no authority to make any contract whatever, which requires it to refrain from, or abate the exercise of the "police power."

Let us now inquire what the "police power" is, which, in this case, the legislature assigns, or forbears to exercise, for a term of years. The legislature is charged by the commonwealth with the power (coupled always with the duty) to protect and promote *public order, safety, health and morals.* This is commonly called "the police power." The coupled duty is unceasing, and requires a constant watching, and a foreseeing, and a discovery, of evils, defects and dangers, and a timely suiting of prevention to peril, remedy to wrong, and cure to ills. It seems an utter absurdity that a legislature can pretermit its duty, or assign its discretion over such subject, or portion of it, for a term of years, especially to a soulless creature of its own creation. The incessant exercise of this very police power—the incessant performance of the coupled duty, is the very reason of the legislature's existence—the very purpose of its creation and endowment with authority.

Illustrating this legal control of public morals by a gambling company, I will suppose some parallels.

As to *public* "*safety*" *and* "*order*," suppose an incorporated band of mercenary rangers are vested with authority to fight and kill Indians on the frontier, and paid for scalps; or suppose an incoporated vigilance committee to be empowered, and subsidized to keep order in a disordered community.

Or, as to *public* "*health*," suppose the slaughter-house company put and keep, during its term of existence, a "butchery" at the

corner of Rampart and Canal streets; or a cemetery company bury its dead in the heart of the city.

Or, as to *public* "*morals*," suppose faro-dealers and lewd people are incorporated, and let to do business for their terms of existence on St. Charles street.

And suppose all these companies comply with their charters in paying money to charity, education, religion, and—what not? and all plead a contract-exemption from the "police power?" Such things cannot be. The legislative vigilance and discretion must be constant, sleepless, unremitting. The Federal Supreme Court says "the legislature cannot, by any contract, divest itself of the power to provide for these objects." Its "discretion can no more be bargained away than the power itself." (7 Otto, 25). It says further that such a contract is not protected by federal article I, § 10, because it involves a governmental and not a property right, while said article and section were only intended to protect property rights. It is evident, therefore, that no such contract can be made.

II. THE LEGISLATURE CANNOT DELEGATE SUCH POWER, or remit the same, certainly not without special authority to that end. *A fortiori* it cannot do so to a grantee of its own creation—a being without a soul, and no motive or end but to make money and corrupt the people. Even to police juries, made of men, it could not, without special authority, delegate the power to legislate or tax. The case is analogous to that of an educator, employed by parents, who farms out his duty to some creature of his own, so that, for a term of years, the mental, moral and physical training of the children is done by a person unknown to, and unauthorized by, the parents.

Is it not obvious that whoever is charged with the safety, order, health, or morals of children or subjects, has necessarily an incessant care which he cannot shirk, assign, or forbear to exercise?

Again, in self-government, men govern themselves through agents, selected from themselves. Hence it is alike unrepublican and preposterous to put governing power—"the police power," over these subjects in a being of human creation, with no moral nature or judgment, and without conscience, sense of duty to men, or final personal responsility to God.

It is evident, then, that such a contract was null *ab initio*, the legislature having no power to make it, and no power to delegate such authority.

III. NO CHARTER FOR SUCH PURPOSE CAN BE GRANTED.

This should seem to be so because the being is created with no object and motive of public good. It performs no useful governmental function, and is of no probable benefit to the people. Legitimate business and public advantage and utility are the only proper motives and purposes for creating private corporations. Indeed, we find it laid down by the highest authority, that "*the public benefit* is deemed a sufficient consideration *for the grant of corporate privileges.* * * The *object* of creating a corporation is the successful promotion of some *design of general utility.* * * The principle is, as Domat says, that the *design* of a corporation is to provide for some *good that is useful to the public.*" Angell and Ames, Corporations, 8; Dartmouth College case, 4 Wheaton, 637: 2 Domat, 452. Says Blackstone (Vol. I, 467): "It has been found necessary, when it is *for the advantage of the public* * * to constitute artificial persons, who may maintain a perpetual succession, and enjoy a kind of legal immortality. "*The advantage of the public,*" then, alone justifies such a a creation.

And our legislative wisdom has always acted on this basis. Article 428, C. C. recognizes "*the promotion of some object of general utility*" as the *raison d'etre* of any such institution. And a careful statutory enumeration of all possible ones excludes the vile thing before us. In the statute of 1847, it is provided, that six or more persons "may form themselves into a corporation for any religious, scientific, literary or charitable purpose." In the one of 1868, provision is made for corporations, "for railroads, and other works of public improvement;" for insurance, for dry docks, for sugar refineries, for sea navigation, for telegraphs, for mining, for agriculture, for immigration, and "*generally, all works of* PUBLIC UTILITY AND ADVANTAGE."

Here again is brought to view and emphasised

THE KEY-NOTE OF OUR LEGISLATION ON THIS SUBJECT.

Corporations can only be established for "*public utility and advantage.*" A corporation for vice is an impossibility; no presumption favors it.

When Bloomer and others presented themselves as a corporation, based on the law, to the legislature of 1868, it was *in fraudem legis.* The wicked—perhaps corrupt—statute 25 of that year, did not, in legalizing such a corporation, serve any purpose of government, or public utility; and hence it, as well as a contract with it, were out of the nature of things, and impossible. Just as we cannot predicate of God, sin, or anything thwarting His own purposes; we cannot predicate of society any action which is immoral, self-corrupting or self-destructive. And the Federal Supreme Court recognize this truth, when they say that such a contract as is set up here, and claimed to be under the protection of Federal Article I, § 10, cannot be made by either legislature or people, and cannot have the Federal protection. And when opportunity arises, I doubt not that they will go further, and say, that even under the organic law of Louisiana, no such corporation can be established; because it is out of the nature of things, and against the very purposes of the constitution.

Society is Divinely ordained. The social instinct and that of self-perservation, put in men's natures, compel them to self-organization. The Divine purpose is for them to act collectively in preserving their inalienable rights, viz: life, liberty and the means of happiness. Hence, as society and its legislature are both charged with the protection and promotion of public safety, order, health and morals, it follows that neither of them can create institutions or make contracts, which are subversive and destructive of these purposes. Such acts are against the nature, aims and ends of society, being alike depraving and suicidal.

It must be for this reason that the Federal Supreme Court say, in Stone vs. Mississippi, 11 Otto, 814, in reference to such a contract: "*No legislature can bargain away health and morality.* THE PEOPLE THEMSELVES CANNOT DO SO."

Now the Constitution of 1879 is purposed solely for the protection and promotion of public safety, order, health and morality. But among its 268 articles, purposed as aforesaid, is found

ONE ARTICLE DEVOTED TO "VICE,"

so the Constitution itself virtually declares, while the present executive—Gov. McEnery—speaks concerning it in his message of 1882, as follows: "The Constitution declares gambling to be a vice; yet it encourages that vice in its worst form, not only incit-

ing to breaches of faith and embezzlement in the effort to get rich in the turn of a wheel, but demoralizing society, corrupting politics, and impeding legislation."

Is this gambling entity a *governmental institution?* Does it partake of the nature of *fundamental law*, which must always involve, as it is intended to conserve and promote, *morality and justice?*

It seems obviously an error or fraud, and ought to be considered as if not written. It is foreign, filthy and festering—nay, cancerous. Its roots are rapidly extending and poisoning society with demoralization. They are the tentaculae of a devil-fish!

IT IS NOT BASED ON "THE CONSENT OF THE GOVERNED."

The State, by Act No. 3, of 1879, called a "convention to *frame* a new Constitution," but not to give it life. Obviously, the duty of the body was to *devise* and *propose* to the said society, governmental institutions, and fundamental laws. It could not write or stamp "DONE" on anything. It was grossly perfidious and usurpatory for these trustees of the people's power, to foist this vile, inconsistent and corrupting thing into the organic law, and sublime audacity to tell them: "You must vote for Article 167 or have no Constitution." The conspirators did not dare to put it singly before the people!

And it is a falsehood, as every right-minded citizen knows, that "by an overwhelming *popular vote*," the franchise of the Louisiana Lottery was, "for educational and charitable purposes" placed in our organic law, though this statement is advertised throughout the land.

What is a vote? It is an exercise of judgment and conscience, in electing or choosing, by each member of the State, who is endowed by her with the privilege, to enable her to make up her mind—the *aggregatio mentium* of the people.

How many such votes were cast for the vile thing? Has "the CONSENT of the governed" really been given, that a chartered association of gamblers shall be part of the constitutional government of the State?

Investigation and reflection upont his subject, in the light of its history and of constitutional law, will convince any one that the infamous rider lacks the "consent" of the commonwealth. Few

if any, men of thought and character can be found who voted approvingly for the lottery provision, while thousands and tens of thousands, it is believed, swallowed the governmental gambling-hell with abhorrence in order to get the Constititution

"Consent of the governed," indeed!

"Overwhelming popular vote," indeed!

"For educational and charitable purposes," indeed!

Having thus far shown that such contract was an impossibility, and void from the first; that probably no such corporation was or could be created; and that it is based on no proper "consent of the governed," I now proceed to show.

IV. THAT THE ALLEGED COMPANY PERISHED IN 1879.

By Act No. 44, of the legislature of that year, the statute alleged to have created the Lottery Company was repealed. Since the promulgation of that repealing Act, the so-called company has been merely a set of men pursuing a nefarious calling by sufferance. The natural persons then lost their collective being; and Article 167, of the Constitution of 1879, has no language showing creative or reviving intent, for it is confined to recognizing a pre-existent statutory being, as will be seen. The above repealing Act of 1879 was not repealed, either expressly or impliedly by Article 167. And even if it was, the death of the being was previously an accomplished fact; and an actual *intent* must be found in said Article 167 to re-create or resurrect the said being, before it can be said that Act 44, of 1879, was repealed by the following clause: "All laws contrary to the provisions of this Article, are hereby declared null and void." There is no sign of such intent.

HENCE THE COMPANY IS NOT A LEGAL ENTITY.

Act 44 of 1879 killed it; and our Supreme Court decides the law to be a valid one [see 32 A. 719]. Possibly the people might in the Constitution have given a new, but they could not have revived a dead, life. At best, they were simply made to commit an error of fact, in recognizing, in Article 167, a being that did not exist, and thereby doing a nugatory act, much like the naming in a will of a legatee, already dead. without heirs.

V. ARTICLE 167 GAVE IT NO NEW LIFE OR RIGHT.

This leads us to a careful inquiry as to the real intent and

effect of the said Article, which will be found not to revive, or give a new existance to said Company.

It reads as follows—Italics mine: "The General Assembly "*shall have authority* to grant lottery charters and privileges, "provided each charter or privilege shall pay not less than "$40,000 per annum in money, into the Treasury of the State, "and provided further, that all charters shall cease and expire "on the First of January, 1895, from which time all lotteries "are prohibited in the State. The $40,000 *now provided by law* "to be paid by the Louisiana Lottery Company, *according to* "*the provisions of its charter, granted in the year 1868*, shall "belong to the Charity Hospital of New Orleans; and the char- "ter of said company is *recognized as a contract* binding on the "State for the period therein specified, except its monopoly "clause, which is hereby abrogated; and all laws contrary to "the provisions of this article are hereby declared null and "void; provided, said company shall file a written renunciation "of all its monopoly features in the office of the Secretary of "State, within sixty days after the ratification of this consti- "tution. Of the additional sums raised by licenses on lotteries, "the hospital at Shreveport shall receive $10,000 annually, and "the remaining sum shall be divided each year among the "several parishes of the State, for the benefit of their schools." From this it is obvious that the convention considered that it left

THE COMPANY'S EXISTENCE MERELY STATUTORY.

Mark well, that its "charter" is referred to, and recognized as having been legislatively given, and as depending for its existence on a statute—Act 25 of 1868, while there is no word or hint of its being originated in, or created by the constitution of 1879; so that the boast of the company, that this commonwealth of people created it, and "imbedded" it in the organic law—thus placing its immoral business above governmental control, is baseless. On the contrary, the company, even if it now exists—which I deny—is actually recognized by the state, as subject, like other persons and corporations, to legislative control.

The words "and the charter of said company is recognized as a contract, binding on the state for the period therein specified,"

only recognize the legal status which the created being previously had, and which the other companies or persons will have, to whom the legislature shall give the "charter" or privilege" which Article 167 provides for. Each new "charter" or "privilege" for the purpose in hand, will be, to the same extent, "a contract binding on the State." The present company's "charter" or "privilege" being recognized in the constitution, alone differentiates it from the others, so that its existence, if it is in fact revived or established in the constitution, which I deny—cannot be judicially or legislatively questioned, while that of any other company can be.

We see, then, that the company was destroyed by the repeal of Act 25, of 1868, while it received no new life or right from Article 167.

Nothing can be assumed as the intent of the Constitution, but what the language of it means. There is no sign of an intent to create, revive or make constitutional; but there is an intent, expressed in plain language, to recognize, and give directions concerning, a creature previously created by statute. Not a word of creation or revival appears in said Article, and not a word of express repeal; and there is no sign of ambiguity affording a basis or pretext for construction. Therefore, while our Supreme Court, in deciding the Carcass case, 32 A., 719, may have been, and probably was, right in deciding that Act 44, of 1879, *was, as to relator, still in force*, it could but be wrong, in even intimating any thing as to the status or being of the Lottery Company, especially as no issue was joined with it, and no argument or authority was adduced *pro* or *con*.

And the Court must see that if Article 167 has language enough to make a corporation—besides doing what it does do—and only needs *obiter dicta* to fill the wishes of the company; we have greatly reformed legislative economy, so that now a constitution need be but a series of hints of what courts are to do—a nest of *ova* and germs, on which judges may hatch flocks of blessings—and curses too!

As to the phrase, " the charter * * is recognized as a contract binding on the State," it simply recognizes whatever contract was implied in the statute or charter. If merely the existence of the company be the subject, we may, for argument, concede the power to make such contract; but this does not

weaken our main contention, which is that the business and conduct of such company cannot by any contract be placed above the police power. "The legislature"—says the Federal Supreme Court—"cannot, by any contract, divest itself of the power to provide for these objects"—"cannot bargain away health and morals. *The people themselves cannot do so*, much less their servants."

I will speak further of the effect of Article 167, when I inquire if it repealed Act 44, of 1879.

VI. HAS A CONTRACT, "IN FACT, BEEN ENTERED INTO?"

In 11 Otto, 814, the Federal Supreme Court says: "It is to be kept in mind that *it is not the charter* which is protected [by Article I, § 10], but *only any contract* which the charter may contain. If there is no contract, there is nothing in the grant on which the Constitution can act. Consequently, the first inquiry, in this class of cases, is, *whether a contract has, in fact*, been entered into; and if so, what its obligations are."

Hence, we see that this so-called charter can exist without containing a contract. But it may be replied that the Constitution says that "the charter is * * recognized as a contract." But a word is not the thing that it names. Nor is the label the bottle, or the wine in it. Ordaining otherwise would be vain. Declaring a stone to be bread does not make it eatable; any more than green spectacles make for a horse green grass of dry straw. Even the Declaration of Independence in no wise made the thing declared. And when the gambling conspirators, and their agents in the Convention of 1879, foisted among the numerous *fundamental laws and governmental institutions*, this lone gambling one—in other words, fastened to a living and healthy form of government, "the body of this death," hoping to transfuse life into the ghastly and rotting corpse, their simply writing, and even the people's ordaining, that the charter was a contract, did not make it such, if it was not such in fact. The nature of things cannot be changed by mere declaration.

But, conceding, for argument's sake, that the so-called charter created the corporate being, still its rights, its business and its conduct, must be, like those of all other persons, subject to the law—the police power of the legislature. And such a contract, involving, as it does, public health and morals, over which

government is charged with incessant care and sworn duty, is not possible, and is not protected by Federal Article I, § 10, which prohibits a State's impairing the obligation of a contract. So the courts decide, notably the Federal Supreme Court, as will be seen further on.

But the repeal of the charter was valid—assuming one to have existed; because Article 447, of the Civil Code, accompanies every charter as a condition. It provides that "a corporation legally established, may be dissolved by an act of the legislature, if they deem it necessary or convenient to the public interest." The clause as to indemnity has only statutory force, and is subject to legislative repeal; so that compensation for investments and property rights, based on the alleged charter, would be, at best, matter of legislative grace. And neither the alleged charter, contract, nor the property-claim can have Federal protection, as is placed beyond doubt by the decisions cited below.

VII. ARTICLE 167 DID NOT REPEAL ACT 44, OF 1879.

Not only is there is no sign of the express repeal of the said statute, or any part thereof, but there can be no implied repeal, because the alleged repealing provision is not contrary to, or irreconcilable with, any part of the said act; and, moreover, we find Act 44, of 1879, to be precisely fitted to carry out Article 170. Wherefore it is simply absurd to imply its repeal by Article 167, on any grounds of *intent* of the people, or of *inconsistency* with the Constitution. It must be kept in mind that the intent to create or revive a given thing, or to repeal a given law, if not obvious, must be found, as a fact, inside of the language, i. e., in the folds, layers, or plicates of expression—for that is precisely what im*plica*tion means; and no sign or shade of such intent can be found. Moreover, Article 258, of the Constitution, places the matter beyond doubt, by providing that "all laws in force at the time of the adoption of this Constitution, and not inconsistent therewith, shall continue as if the said Constitution had not been adopted." Who will dare, in the face of Article 170, to say that Act 44, of 1879, is inconsistent with the Constitution? Who will say that 167 was intended to nullify 170, and subject the police power, *pro tanto*, to the business and discretion of a gang of gamblers? The said Article

167 declares null "all laws that are contrary to the provisions of this article." At most, 167 gives the corporate being existence, makes it an equal citizen, and gives it a citizen's equal right to do its business. Now Article 170 does not impair or destroy the person or right, but governs and regulates them civilly and criminally—carrying out the police power concerning public safety, order, health and morals. "All rights are held subject to this police power," says the Federal Supreme Court, deciding, at the same time, that there could be no contract of exemption; and that the alleged contract has no Federal protection. Thus we see that Article 170 and Act 44, of 1879, virtually under it, are not nullified by 167.

Nay more, our Supreme Court in the aforesaid Carcass case, 32 A., 719, have affirmed the constitutionality and effectiveness of the act in question; and have unqualifiedly declared that "it went so far as to withdraw the charter of a corporation up to then in existence." This, though somewhat inconsistent with other expressions, is matter of fact, not *exegesis*—of history, not law. We need not construe, or talk of express or implied repeals. As the statute was a law, the corporation must have been dead for nine months before Article 167, which is alleged to have revived it, had existence? The court itself assents to this; and no language in the Article hints at an intent to revive or create; all of it being recognitive or confirmatory; and as the creator and destroyer—the State, is silent as to creation or revival, it is not presumable that its creature, the court, can, by mere *obiter dictum*, restore a life which it declares the said creator has "withdrawn." If *the company* had been sued between the 27th of March, 1879, and the 1st of January, 1880, for the $40,000 annual license, would any of our courts have given judgment against it? Would not any of them have sustained a plea that it could not sue or be sued, and could not stand in judgment? This monster of evil then perished. "Infamy" was its epitaph. Its body rotted; and no earthly power could give it resurrection!

But suppose the statute was to some extent or degree repealed. by Article 167; it does not follow that the Act [No. 25, of 1868,] which it repealed, and the life it "withdrew" were revived. We have no revival of statutes by reference; and any statute for that purpose must have a title containing mention of its subject

A fortiori, it is so with Article 167, which speaks of a "charter" and a "contract," without using any language to make them, being much like a title without a statute. Bloomer et als. had lost their collective being by repeal. As a corporation, they were dead. Now something more than a hint or wish or wink is needed for a charter. Otherwise the State needs but hint at what she wants, leaving it to her servants to say and do what it is. The corporate person must consist of six or more natural ones. Who are they in this case? The corporate *succession* of persons following Bloomer et als. was destroyed by the Act of 1879. Who are the corporators now?

Again, the essential characteristics of the old corporation are repealed, viz: the name, domicil, business, power to make contracts and by-laws, and hold property, and right to sue and be sued, &c. What are those of the new one? How did they arise? What is the evidence of them?

Again, a new contract is established. What parties and obligations does it involve? Can the State, *ex parte*, make and impose a contract? The party herein agreed, perforce, to give up its monopoly; did it agree to anything else? Did it, for instance, agree to pay $40,000 per annum?

Again, the words of 167 do recognize a pre-existent being; therefore they do not create a being; and therefore the being in question is not a constitutional one, and is not above any statutory regulation.

I beg leave to repeat that it is absurd to talk of any intent that is not in the language. Look at it, a few pages above.

I submit the above questions and suggestions with deference. God's laws of justice, morality and virtue ever work with silent but sure force, so that is hard to contrive villainy that will endure. In this bad job for the bad purposes of bad men,

"Some one has blundered,"

and the work is vain!

But conceding that Article 167 raised the dead, and that the reanimated corpse is to live out its original term, still

VIII. ALL LOTTERY DEALERS ARE EQUAL IN LAW,

and all continuously subject to the police power of the legislature —subject to control, and even prohibition; for, as we have seen, uch power over public order and morals is coupled with the

incessant duty of protecting and promoting them; and no assignment or delegation of such power or duty is a legal possibility. Anything beyond a license from year to year is *ultra vires*. And a close inspection of the language shows such to be the apparent intent of the Constitution. Article 167 provides that "the General Assembly shall have authority to grant lottery charters and privileges." "Each charter or privilege shall pay not less than $40,000" to the State. The $40,000 "now provided by law to be paid by the Louisiana Lottery Company, * * shall belong to the Charity Hospital." "Of the additional sums raised by licenses on lotteries," the Shreveport Hospital is to get $10,000, and the rest is to go to the parishes for schools.

Now is it not obvious that all these per annum payments (including that of the present company,) are "*raised by licenses on lotteries*"? How otherwise, account for the phrase "additional sums raised by licenses on lotteries." There can be no other money for the "sums" mentioned to be "*additional*" to, than the present company's yearly license tax—the $40,000 per annum the said company pays. Moreover

OUR SUPREME COURT SAY ALL ARE EQUAL

before and under the law; for, in the Carcass case, 32 A., 719, they hold that it was the convention's intent "to place on a footing of equality with this corporation, all other individuals who may desire to deal in this same kind of business;" and they further say that other companies cannot go into the business the present company follows, without, LIKE IT, *obtaining a charter and paying a license.* All companies then are equal under the law, and all must pay a yearly license. And, as will be seen, the Federal Supreme Court agrees with ours, in characterizing the warrant for the so-called "business" as a "license" and a "permit." It must, as the Federal Court decides, be continuously subject to withdrawal and prohibition, and be without the protection of Federal Article I, § 10. The Company is held to be, both in person and vocation, subject to the police power, and not a matter for contract. Its license is alike a tax on a subject, and a permit for his business. Is it not absurd for it to contend that it pays $40,000 per annum, under contract with the state, as a consideration for being incorporated and placed above the laws which protect public morals, and "suppress"

"vice," [see Constitution Article 170,]—that is to say, above the police power; and yet that it pays this yearly license tax of $40,000, in lieu of all others. Can the same sum be the consideration of the contract, and the tax on the person under the law?

It seems obvious that no person or corporation can be set above, or exempted from the law, even where his calling is moral and legitimate, *a fortiori* it must be so, if the aim and tendency of the business are gambling, "vice," and corruption of people and government. Putting such "vice," and the gang that follows it, above the police power, because they have by trick or corruption got from the personified and piebald scoundrelism, misnamed a legislature, a so-called charter, is contrary to all ideas and purposes of government, depraving to society, corrupting to its rulers—in short, an unexampled outrage and crime!

IX. The courts on the "police power."

I will now cite the courts on this power, and its control of the business and conduct of all juridical beings, including the Lottery Company; and the impossibility of the legislature making a contract to delegate, or pretermit its police power and duty, or exempting any juridical being from its operation.

I will confine my citations, for the present, to the Federal Supreme Court, because its jurisdiction will sooner or later be exercised.

In Beer Co. vs. Massachusetts, [7 Otto, 25,] the court says "The plaintiff in error was incorporated for the purpose of "manufacturing malt liquors in all their varieties; and the "right to manufacture undoubtedly, as the plaintiff's coun-"sel contends, included the incidental right to dispose of the "liquors manufactured. But although this right or capacity "was thus granted in the most unqualified form, it cannot be "construed as conferring any greater or more sacred right than "any citizen had to manufacture malt liquor; nor as exempting "the corporation from any control therein, to which a citizen "would be subject, if the interests of the community should "require it. If the public safety or the public morals require the "discontinuance of any manufacture or traffic, the hand of the

" *legislature cannot be stayed from providing for its discontinu-*
" *ance, by any incidental inconvenience which individuals or*
" *corporations may suffer. All rights are held subject to the*
" *police power of the State.* * * There seems to be no doubt
" that the police power extends to the protection of the lives,
" health and property of the citizens, and to the preservation of
" good order and the public morals. The legislature cannot, by
" any contract, divest itself of the power to provide for these
" objects, * * and *they are to be attained and provided for by*
" such appropriate means as the *legislative discretion* may devise.
" *That discretion can no more be bargained away than the*
" *power itself.* See also N. W. Fertilizing Company vs. Hyde Park, 7 Otto, 659: Boyd vs. Alabama. 4 Otto, 635; and Stone vs. Mississippi, 11 Otto, 814.

In the last-named case the court say, in reference to the plea that repealing the charter, or stopping the business, impairs the obligation of a contract: " *The contracts which the constitution* protects, are those which relate to property rights, not governmental." The principle here recognized is, that where the governmental agency is charged by the people with the police power and duty, it has a right, coupled with the said power and duty, which it cannot contract away or grant, as it could a property right, It " cannot bargain away health and morals," or contract to omit its duty in regard to them.

Another vital principle heretofore noted, is recognized—a principle which should be made constitutional, but which our present statesmen seem to ignore, viz: that corporations are *for public good, not evil*—public benefit and utility being the only proper motives and purposes for creating them.

X. THE LAW, THEN, CAN STOP LOTTERY GAMBLING despite the charter. The court then says, treating *ex professo* of the police power of the legislature, as well as the power of the government generally to prohibit gambling, and especially lottery gambling: "But the power of governing is a trust " committed by the people to the government, no part of which " can be granted away. The people, in their sovereign capacity, " have established their agencies for the preservation of the " public health and the public morals, and the protection of " public and private rights. These several agencies can govern

" according to their discretion, if within the scope of their " general authority while in power, but they cannot give away " nor sell the discretion of those that are to come after them, in " respect to matters, the government of which, from the very " nature of things, must 'vary with varying circumstances.' " They may create corporations, and give them, so to speak, a " limited citizenship; but as citizens, limited in their privileges " or otherwise, these creatures of the government creation, are " *subject to such rules and regulations* as may from time to time " be ordained and established, for the preservation of health and " morality. Certainly the right to suppress them is governmen- " tal, to be exercised at all times, by those in power, at their " discretion. *Any one, therefore, who accepts a lottery charter,* " *does so with the implied understanding that the people,* in their " sovereign capacity, and through their properly constituted " agencies, *may resume it at any time* when the public good " shall require, whether it be paid for or not. * * He [who " has said charter] has, in legal effect, nothing more than a " *license* to enjoy the privilege, on the terms named, for a " specified time, unless it be sooner abrogated by the sovereign " power of the State. It is a *permit*, good as against existing " laws, but *subject to* future legislative or constitutional *control* " *or withdrawal.*"

The legislature, then, can stop the business of the company, in spite of its charter.

XI. OUR LEGISLATURE IS COMMANDED TO STOP IT.

The imperative mandate of the sovereign commonwealth to this effect is as follows: "Article 170, Gambling is declared to be a vice, and the General Assembly shall enact laws for its suppression." This means all gambling, and necessarily includes the lottery business.

I now beg leave to ask if Act 44 of 1879 is not entirely consistent with Article 170—the very duty that the Article commanded being provided for by the Act; and if our Courts are not oath-bound to make 167 give way to 170—the former merely at best, *creating a being*, and the latter *controlling its conduct and business.*

At all events do we not find that the great gambling permit which disgraces our Constitution in the eyes of the world, is temporary; within the control of the Legislature; and reachable

by ordinary statute. Though *the being may exist* for its term, *its person, its property, its business, its conduct, its discretion, are*, like those of any other subject, *under the police power;* and the said power, with the coupled duty of exercising it properly, is continuous; and they are not restrained or lessened in any degree by Article 167.

We may, therefore, with an incorruptible legislature, and an earnest and honest judiciary, *have this lottery gambling suppressed.*

THE MOST DECISIVE CONDEMNATION

that can be pronounced on earth, is that of the federal supreme court, which, besides expressing the foregoing views, has repeatedly reprobated the wickedness and villainy of the business, and declared that it is not protected against ordinary legislation.

In Phalen vs Virgina, [8 Howard 163,] the court said: "Experience has shown that the common forms of gambling are "comparatively innocuous when placed in contrast with the "wide-spread pestilence of lotteries. The former are confined "to a few persons and places. but the latter infests the whole "community; it enters every dwelling; it reaches every class; "it preys upon the hard earnings of the poor; and it plunders "the ignorant and simple."

The present Federal Supreme Court, in the above case of Stone vs Mississippi, [11 Otto 814] speak *idem sonans*: "They "are a species of gambling, and wrong in their influences. "They disturb the checks and balances of a well ordered "community. Society built on such a foundation would, almost "of necessity, bring forth a population of speculators and "gamblers. * *

I will now conclude with some

GENERAL CONSIDERATIONS,

and, *en passant*. meet objections and difficulties; suggest remedies; and formulate the points I have maintained.

THE LINE BETWEEN VIRTUE AND VICE

should be kept in view by all public functionaries, especially legislators, whose duty it is to make rules of action for all the subjects of the law; and they should always be certain that every act of government is on the right side. Surely they know what tends to public safety, health and morals, and what do

not. In the matter before us, they are not fit to legislate for, or govern, even Yahoos, if they cannot see that a mercantile, manufacturing, mining, canal, railroad, telegraph, literary, charitable, educational, or religious company may properly be put in a continuing charter, because engaged in legitimate business, which is not injurious to public safety, morals or health, while a bawdy, gambling, burglarizing, or thieving company, as well as some that carry on such pursuits as slaughtering, making of chemicals and manures, vending of drugs, and grog selling, must, because of their constant influence on public safety, health and morals, be kept under continuous control, ceaseless vigilance, and unremitting duty.

And if the legislature place such power and such duty, by statute, beyond the control of both itself and its sovereign, (as is claimed to be done in this case), its act is *ultra vires* and null. And the company, even aside from the moral question, has no ground of complaint, for they transacted this business with the sovereignty's agency at their peril. They were bound to see whether the said agency exceeded its powers or not; and to remember that construction as to such powers, is strict against the agent.

IT IS WICKED FOLLY TO INCREASE THE EVIL.

It has been from the beginning, a great and an immoral mistake, in opposing the Louisiana Lottery Company, to try to establish others. I declined to aid in such policy, and predicted that the company's advocates would—as they did, and as they do now—contend that lotteries are immoral, and a curse that should not be extended beyond the one ensconced in the constitution, which we must bear with, as best we may, till its constitutional life expires in 1895. [see Kavanagh's report, last legislature].

THE BOSS OF THE COMMONWEALTH.

In a protest I wrote,, and tried to put before the constitutional convention of 1879, assuming the effectiveness of article 167, I predicted that, thus ensconced, the Lottery Company would be an *imperium in imperio*, or in other words, that it *would be the government of Louisiana as far as it chose to be* till 1892, and *would by that time, be able to provide for its continued existence.* Already it has often made its potency felt in public affairs, to the joy of the venal, and the sorrow of the patriotic.

LEGALIZING EVIL AND MAKING IT PAY!

Conceding that legislation should take cognizance of vices, but insisting that it should do so to mitigate or suppress them, I can but think it absurdity and folly to say "irrepressible evils [which of course, include drunkenness, gambling, lewdness, theft, burglary, etc.,] should be recognized, regulated, and made to pay revenue for the support of charity, education, etc. Now why not extend the idea, and make vice and crime free us from taxes, and not only aid charitable and educational but religious institutions? Why not make intemperance and debauchery build churches and pay the clergy? If we incorporate burglars, bawds, bullies and beggars, and legalize bunco, monte, faro and roulette—"milking" the whole herd, can we not stop taxation, and make government as free and beneficient as dew, rain and sun?

TUBS TO THE WHALE.

It is pleaded that the people, in their constitution, abrogated, and the company yielded the monopoly of lottery gambling. It is boasted that we gained a great point. The sham and stupidity of it appear, if we reflect how A. T. Stewart and Charles Morgan would have laughed at a law prohibiting a monopoly of the dry-goods or Texas trade, which their capital and management commanded in spite of law; and how the Louisiana Lottery Company has, by its capital and management kept its monopoly, despite the surrender of it, and despite the plain and emphatic intent of the commonwealth.

ANOTHER TUB TO THE WHALE

is the ex-Confederate Generals. The public have confidence in them, and they guarantee the fairness of the drawings. What a sham! If the people believe that prizes, amounting to $100,000 or $200,000, are really drawn, it satisfies them, even if the company has before the drawing pocketed $500,000 or $1,000,000 for the tickets sold. The game and the enormous profits are made before the Generals appear. They merely and honestly announce the awards of Fortune. If the drawers were angels, the wheels crystal, and the scheme cyphered on the sky, so much the better for the company. Indeed, the company yearn for fairness—with conspicuous proof of it. And as such proof pays, I suggest

"A *bishop* and two generals"

as a bigger tub—one that would make the whale wag his tail with much delight.

Other tubs may be mentioned, notably charities, benefactions, Grand Juries, &c., but I have not time or space for it.

DECEPTION AND HYPOCRISY.

These gambling corporations "steal the livery of the court of Heaven to serve the devil in," so to speak, and masquerade before the gullible public in benevolent, educational and patriotic cloaks. In Boyd vs. Alabama, and Stone vs. Mississisippi—both lottery cases—the Federal Supreme Court speak of "the evident purpose to conceal the vice of the transaction by the phrases used." In the Alabama case, the mask of the lottery was: "An act to establish a mutual aid association, and to raise funds for the common school system of Alabama." In the Mississippi case, the mask is: "An act incorporating the Mississippi agricultural and manufacturing aid society." In our case, as the statute is null if its title do not reveal its subjects, the title is: "An act to increase the revenues of the State, and to authorize the incorporation of the Louisiana State Lottery Company," and the motives and purposes are stated to be, "to prevent," the outflow of our money, and "the impoverishment of our people;" to "establish a home institution, and secure fair drawings;" and "to provide * * a fund for educational and charitable purposes, for the people of Louisiana."

And the newspapers throughout the State and the United States advertise that "the company is incorporated by the legislature for educational purposes." and that "by an overwhelming popular vote, its franchise was made a part of the present State Constitution."

What noble motives! These bodies can hardly be "lower than the angels!" Why should we wish for a millennium, or sigh for a better world?

IS THERE NOT A CONSPIRACY ?

Passing all facts to 1879, the people then evidently wished to be rid of the evil, and the statute of that year voiced their condemnation. Next we have the Federal Court's judgment on the false plea of a contract, and the State's neglect to appeal. Then comes the State, and in Article 170, denounces this "gambling" as "vice," and commands its "suppression," when lo! up simultaneously pops a trade, viz: that for and in consideration of $40,000 a year, this corporate gambler's "gambling" is virtuous

or moral "vice"' and that the company's charter shall be one of our institutions of government till 1895.

This "institution" was foisted in among our organic laws, despite the protestations and votes of nine-tenths of the brains, moral force, public opinion and property of the State, as represented by the 52 conservative patriots, who stood true to the commonwealth, to morality, to freedom and to God !

They were mysteriously defeated; and the result is a foreign and cankering substance in the side of the commonwealth, a blot on her escutcheon, a highly prolific source of demoralization to the people, and an untold amount of corruption in the government!

IN CONCLUSION,

I beg leave to state the following contentions, and to submit that they are sustained by the above reasoning and authorities.

I. That the immoral contract to pretermit the exercise of the police power over the conduct and business of the Louisiana Lottery Company for 25 years, had no legal existence *ab initio* "No legislature can bargain away [its duty as to] health and morality. The people themselves cannot do it." [See 11 Otto, [814.]

II. That as such a corporation is for no governmental purpose. and for no design of public utility, but is intended for what the Constitution declares to be "vice," its creation is of doubtful validity, if not impossible. I humbly opine that no legislature, convention, or people, charged with governing, can create a being purposed for immorality or vice.

III. That the alleged contract involves a governmental and not a property right; and hence it is not protected against the police power by federal Article 1, § 10, which forbids a law impairing the obligation of a contract. Obviously, as the government is charged with protecting public morality, and suppressing "vice," no contract that prevents the exercise of this governmental duty and consequent "right," is possible, or protected by the said federal article.

IV. That if the so-called corporation ever did exist, the State destroyed it in 1879, and that the statute destroying it, viz: Act 44 of 1879, must be presumed to be effective, till it is directly attacked, and judicially decided to be unconstitutional. Our Supreme Court have already decided it to be a valid act,

and have not, on any issue before them, decided any part to be unconstitutional.

V. That this being was not revived or resurrected by Article 167 of the Constitution of 1879, because no earthly power can raise the dead; and, because, all the language of the article touching the subject, is mere recognitive and not creative; so that the said being remains statutory and antecedent, and not constitutional.

VI. That if the being do now exist, its conduct and business, like those of all other juridical persons, must be under the police power of the legislature; and there can be no conflict between Articles 167 and 170, because the former at best creates a new equal being under the law, while the latter, with Act 44, of 1879, under it, merely regulates or controls the civil or criminal conduct and business of the said being.

VII. That Act 44, of 1879, cannot be unconstitutional, because it precisely carries out Article 190, which commands legislative suppression of the "vice" of "gambling;" because the Executive Department has decided this lottery business to be referred to by the said article [see last executive message]; because, as just now said, Articles 167 and 170 are not inconsistent, as the one creates the company, while the other only governs its conduct; because Article 167 can not and does not exempt the lottery business from the regulations of the police power; and because the Constitution itself saves and continues the statute. [See Article 258.]

VIII. That the business of this so-called institution, can be licensed from year to year, or prohibited according to legislative discretion, precisely as that of any other citizen, engaged in such business, can. Our Supreme Court agrees with the Federal one, that the warrant for its business is a "license" or "permit" under the law.

IX. That to do away with the evil, no two-thirds vote, as for amendments to the Constitution, is needed; the business, if not the corporate monster itself, being subject to a simple legislative majority.

May we not conclude, then, that the lottery business is subject to ordinary legislation not only, but that we have an actual and valid statute prohibiting it under penalties, based on the command of Article 170; and that the fearful evil can be speedily

removed, if we have a proper legislature, good grand juries, dutiful attorneys for the State, and a wise and fearless judiciary.

The people, "by an overwhelming majority," have denounced its "gambling" as a "vice," and commanded its "suppression." Let us move all officers and grand juries, in every direction, to their duty, and let us require every candidate for office, from highest to lowest, to declare himself on this all-important subject. And especially let us demand of every legislative aspirant, how he intends to use the police power. Even after the nomination for Governor, the contest must go on as to legislators, who constitute the chief power of government.

In conclusion, I beg leave to say that while I may be mistaken in some of my contentions, I sincerely make them all; and I insist, as I have long done in my capacity of citizen, and not as a politician, that these matters shall be discussed, and that our fellow citizens shall know the facts and authorities to enable them to determine the issues.

And I trust I may suggest, without offence, that we have persons and classes among us, whose silence, on the great subject herein discussed, is criminal in the sight of man and God.

Yours Respectfully,

B. J. SAGE.